No. 81-50

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1981

PRUDENCE J. CAMARDO; ARTHUR FALZONE, HENRY J. PAPE, IVAN WAHLS, LILLIAN WAHLS, and all persons similarly situated, BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT No. 4, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 10, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 8, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 6; All of the TOWN OF GREECE, and DANIEL A. STETZEL, SR., *Appellants,*

vs.

CITY OF ROCHESTER, N.Y., BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, BOARD OF

(Over)

Appeal from the Court of Appeals of the State of New York

BRIEF FOR DEFENDANTS-APPELLEES, CITY OF ROCHESTER AND BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT ON THEIR MOTION TO DISMISS THE APPEAL UNDER SUPREME COURT RULE 16(b) ON THE GROUND THAT IT DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

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Appellees.

Action No. 1

ELLEN ANDERSON and CHARLES and GERTRUDE LA VALLE, and all persons similarly situated, BERNADETTE UEBLACKER and JAMES and PATRICIA BRITT, and all persons similarly situated,

Appellants,

vs.

THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, and THE STATE OF NEW YORK,

Appellees.

Action No. 2

MOTION TO DISMISS

Appellees, City of Rochester, N.Y. and Board of Education of the City School District, move to dismiss the appeal herein, on the ground that no substantial Federal question has been presented.

COUNTER STATEMENT OF THE QUESTION PRESENTED

Did three annexation statutes passed between 1915 and 1922, which caused *de facto* elimination of school taxes for residents living within specific geographic boundaries, create vested rights for appellants to be free from school taxes upon appellants' subsequent purchases of property within the designated geographic areas.

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In The

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October Term, 1981

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Appeal From The Court Of Appeals Of The State Of New York

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THE STATE STATUTES INVOLVED AND THE NATURE OF THE CASE

Appellants contend that three annexation statutes which amended the City Charter created vested rights. These statutes were Chapter 359 of the Laws of New York, 1915, Chapter 547 of the Laws of New York, 1918, and Chapter 519 of the Laws of New York, 1922. Each law increased the territory of the City of Rochester. In addition, police and fire protection was broadened. Water and sewer lines were extended. Trolley service was enlarged. Harbor and beach facilities were improved, and a location for a hospital was secured.

These annexations divided previously existing school districts. Annexed portions became part of the City School District, and school facilities within the annexed territories became City School District property. The unannexed parts of the school districts maintained their identities, but they were left without facilities to educate pupils. The State Legislature

alleviated this problem by requiring the City School District to permit children living in the unannexed portions of the school districts to attend city schools tuition free.

The unannexed school districts continued in existence until 1975, when they were abolished and incorporated into the Greece Central School District by Chapter 125 of the Laws of New York, 1975. These abolished districts are the corporate appellants herein.

The annexation statutes did not disturb the power of the appellant school districts to levy taxes, but no taxes were levied by any of the appellant districts until 1971, when one of the appellant districts levied a small tax to purchase vehicles to transport some pupils. Chapter 125 of the Laws of New York, 1975, caused the residents of the appellant school districts to become fully subject to Greece Central School District taxes over a five year, phase-in period. The tax levied by the Greece Central School District was much greater than the previous tax, because the tax had to cover the budget for salaries, buildings, transportation, supplies, debt service, et cetera. Prior to 1975, the appellant districts had no budget to fund, except for the few vehicles already mentioned.

This increased tax burden is the reason for this lawsuit. Appellants' alleged desires to protect their rights to have children educated by the City School District tuition free is a sham that can be shown from the law and the proof elicited at trial.

The 1975 law required the City School District to provide education to pupils living in the appellant districts who were attending city schools in 1975. This right to an education remained tuition free to the pupils. The obligation extended to siblings, and the obligation continued until they graduated from high school. None of the appellants exercised their right to have their children educated in the city schools. Ten residents

testified during the trial. Only three had children attending city schools when the challenged law was passed in 1975. There was no proof that any of the witnesses' children were attending city schools at the time of trial in November, 1978. Each witness did testify with respect to the benefits they had enjoyed as a result of not having to pay school taxes.

ARGUMENT

THIS CASE PRESENTS NO SUBSTANTIAL FEDERAL QUESTION

POINT I

Appellants have not established the elements required for this Court to find a contract arising out of the annexation statutes of 1915, 1918 and 1922.

Although some statutes may create vested contract rights, the principal function of a legislature is not to make contracts, but to make laws which declare the policy of the state. These laws are subject to repeal by subsequent legislatures. *Indiana ex rel Anderson v. Brand,* 303 U.S. 95, 100 (1937); *Dodge v. Board of Education,* 302 U.S. 74, 79, (1937); *Cook v. City of Binghamton,* 48 N.Y.2d 323, 329 (1979). To prove the existence of vested contract rights arising out of legislation, the appellants must show that a promise was given them and that they have given consideration. *Wisconsin & Michigan Railway Company v. Powers,* 191 U.S. 379 (1903). The appellants must also show an intent on the part of the legislature to be bound. *Cook v. Binghamton,* supra, at 330, which relies on *Indiana,* supra.

POINT II

This Court gives great weight to the views of the highest court in deciding cases of this nature.

The question whether a contract has been created by statute is federal, but the decision is based upon an appraisal of the statutes of the state and the decisions of its courts. This Court gives great weight to the views of the state's highest court in determining the existence of the contract. *Indiana,* supra at 100; *Dodge,* supra, at 79 and *Phelps v. Board of Education,* 300 U.S. 319, 322 (1936).

POINT III

The annexation statutes do not create private contract rights, because no promise was given by the legislature.

The case of *Pennsylvania Railroad Company v. State,* 11 N.Y.2d 504 (1962) destroys the appellants' arguments in this case. In *Pennsylvania Railroad,* the legislature had passed a law pursuant to negotiations between the Long Island Transit Authority, on the one hand, and the Long Island Railroad Company and the Pennsylvania Railroad, on the other hand. The law permitted railroads that qualified as redevelopment corporations to raise their fares without the prior approval of the Public Service Commission. Four years later, the right to obtain fare increases without prior approval was abolished by amendment to the law. The railroad sued the state on the ground that the amendment had unconstitutionally impaired its contract which arose under the original statute. It alleged that it had negotiated with an agency of the state, that the negotiations had led to the original statute and that it had performed in accordance with a certificate of approval issued by the Public Service Commission.

The Court of Appeals in a caustic opinion reiterated the presumption that legislation is not intended to create private

contractual rights or vested rights, but merely declares a policy to be pursued until the legislature shall ordain otherwise. The court went on to say:

> 'It is never to be assumed,' this court has said, 'that the State has * * * fettered its power in the future, except upon clear and irresistable evidence that the engagement was in the nature of a private contract, as distinguished from a mere act of general legislation; and that such in the particular instance, was the actual and deliberate intention of the State authorities.' (Citations omitted) *Pennsylvania Railroad,* supra at 511.

The court required that a particular specified party be named in the statute before it could create contract rights.

> There is, of course, a distinction between a special legislative act granting a right to a *particular specified party* and a statute affording 'general encouragement to all persons to engage in a certain class of enterprise.' *Pennsylvania Railroad,* supra at 512 (emphasis added)

There are no particular specified parties set forth in the annexation statutes. These laws refer to "children" residing within certain territorial boundaries.

The need to have a particular specified party named in the legislation before contractual rights attach was explained in *Wisconsin & Mighigan Railway Company v. Powers,* supra, and it was repeated in *Pennsylvania Railroad,* supra.

> 'The broad ground in a case like this,' wrote Mr. Justice Holmes, 'is that, in view of the subject matter, the legislature is not making promises, but forming a scheme of public revenue and public improvement. In announcing its policy and providing for carrying it out it may open a chance for benefits to those who comply with its conditions, *but it does not address them, and therefor, it makes no promises* to them.' *Pennsylvania Railroad,* supra at 512. (emphasis added)

Without addressing a particular specified party, no promise can be made.

POINT IV

The appellants gave no consideration.

The appellants allege detrimental reliance as their consideration for the ongoing obligation to educate their children tuition free. Even if detrimental reliance was proven, it would not be sufficient to create contract rights in this situation.

In the *Wisconsin & Michigan Railway* case Justice Holmes recognized that the plaintiff had acted to its detriment by investing in railroad construction and operation within a designated area. This was not sufficient to create a binding statutory obligation analogous to contract.

> [T]he other elements are that the promise and the detriment are the conventional inducements each for the other. No matter what the actual motive may have been, by the express or implied terms of the supposed contract, the promise and the consideration must purport to be the motive each for the other, in whole or at least in part. It is not enough that the promise induces the detriment or that the detriment induces the promise, if the other half is wanting. *Wisconsin & Michigan Railway Company v. Powers,* supra at 386.

The Legislature had none of the plaintiffs in mind when it required tuition free education in City schools. Therefore, any alleged promise could not have been induced by the alleged detriment incurred by the plaintiffs.

> It would be quite intolerable if parties not expressly addressed were to be allowed to set up a contract on the strength of their interest in, and action on the faith of, a statute, merely because their interest was obvious and their action likely, on the face of the law. *Pennsylvania Railroad,* supra at 512.

POINT V

The language of the three annexation statutes does not indicate an intent on the part of the Legislature to create any contractual relationships, nor is there court precedent interpreting similar language as creating contract rights.

The appellants cite the case of *Indiana,* supra for the proposition that contracts may be created by statute even when there is no specifically named party. This reliance is unfounded because the case is unique. The courts of the state of Indiana had long considered the relationship between teacher and school districts as contractual in nature. In addition, the law in question referred to "contract" 25 times. The Court of Appeals in rejecting *Indiana* said,

> In *Indiana* (supra) for example, the statute in question employed the term 'contract' a total of 25 times, defining the relation of teachers to the school district and stating the conditions for a teacher's termination. Moreover, 'the tenor of the act indicates that the word 'contract' was not used inadvertently or in other than its usual legal meaning' and prior decisions of the State's highest court interpreting the statute had uniformly held the rights created pursuant to it to be contractual in nature. *Cook v. City of Binghamton,* supra at 330.

It should be noted that Mr. Justice Roberts not only wrote the opinion in the *Indiana* case, but he also authored *Phelps v. Board of Education,* supra and *Dodge v. Board of Education,* supra (which were two cases involving situations similar to the *Indiana* case arising in New Jersey and Illinois). Contrary to *Indiana,* he found no constitutional impairment of contract. There was no judicial history treating the acts involved as contractual in nature, and there were no references in either statute to contractual language.

The language of the annexation statutes does not mention contract. The statutes make no promise. They name no parties.

No cases have been cited in which the Court of Appeals of New York has interpreted language similar to that in the annexation statutes as "susceptible of no other reasonable construction than that a contract was intended." *Pennsylvania Railroad,* supra at 511. At no time prior to the passage of the annexation statutes, nor since, has the Court of Appeals created a precedent upon which residents in 1915 or the appellants could rely.

POINT VI

The corporate appellants have no contract rights.

The Constitution of New York and judicial precedent establish the legislature as having plenary power in the area of education. The power can be exercised to alter or abolish school districts even at the expense of the inhabitants of an affected district.

In *Board of Education v. Board of Education,* 76 App. Div. 355 (1902), affirmed without opinion, 179 N.Y. 556 (1904), it was ruled that the legislature could reform the boundaries of school districts despite the argument that certain obligations had been created prior to the reformation which the reformation would affect. The controversy arose, because the change in boundries caused certain inhabitants to be subject to higher taxes. The Court found that the New York Constitution reserved power in the legislature to alter or revoke its statutes, and when such a change in the law occurred, no impairment took place.

> A legislative grant to a corporation of such privileges, if not forbidden by the Constitution, may be a contract; but where one of the conditions of the grant is that the Legislature may alter or revoke it, a law altering or revoking, or which has the effect of altering or revoking the exclusive character of such privileges cannot be regarded as one impairing the obligation of contract,

> whatever may be the motive of the Legislature or however harshly such legislation may operate in the particular case upon the corporation or parties affected by it. *Board of Education*, supra, at 358.

In 1915, the New York Constitution did provide a reservation of power to the legislature to alter all statutes and the common law.

> Such parts of the common law, and of the acts of the legislature of the Colony of New York * * *; and such acts of the Legislature of this State as are now in force, shall be and continue the law of the State, subject to such alterations as the Legislature shall make concerning the same. *N.Y. Const. Art. I*, S.16 (1894); *N.Y. Const. Art. I*, S.16 (1915); *N.Y. Const. Art. I*, S.14 (1938).

The annexation statutes of 1915, 1918 and 1922 were subject to this constitutional provision allowing alteration.

In 1927 the Appellate Division, Fourth Department, of the State of New York reiterated the rule that the legislature has complete and plenary power to alter school districts without consent of the district. The court also said the rights of the individuals in the territory affected are not violated, despite an increased tax burden. *Adriaansen v. Board of Education*, 222 App. Div. 320, affirmed 248 N.Y. 542 (1928).

In 1944, Motion Term decided *Board of Education v. Stoddard*, 49 N.Y.S. 38 (S. Ct., Albany County). The petitioner alleged an impairment of contract caused by an amendment to the education law which changed state aid to school districts. Relying upon *Hunter v. City of Pittsburg*, 207 U.S. 161 (1907) and *N.Y. Const. Art. XI*, S.1 (1938) which gave plenary power to the legislature to provide a state-wide system of free education, the court ruled that despite the incurrence of a debt made in reliance upon a statutory state aid formula, the legislature could amend the statute. It found that the original statute did not create a contract.

"It would be unnecessary and unprofitable to analyze these decisions or quote from the opinions rendered. We think the following principles have been established by them and have become settled doctrines of this court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the government powers of the state as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation.

"All this may be done, conditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, * * * burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the state, and those who legislate for the state

> are alone responsible for any unjust or oppressive exercise of it." *Board of Education v. Stoddard,* 49 N.Y.S.2d 38, 40.

The Motion Term was affirmed by the Appellate Division and the Court of Appeals. *Board of Education v. Stoddard,* supra, 268 App. Div. 936 (1944); 294 N.Y. 667 (1945).

Again, in 1951, the Court of Appeals ruled that education was a matter of State interest and the school district boundaries could be changed according to current educational needs and good educational principles. *Matter of Bethlehem Union Free School v. Wilson,* 303 N.Y. 107 (1951).

POINT VII

The annexation statutes created *de facto* tax exemptions which are not favored by the law.

Appellants cite *People ex rel. Troy Union Railroad Company v. Mealey,* 254 U.S. 47 (1920) as authority for the rule that legislation may create private contract rights where the statute grants a franchise, exemption or privilege to a corporation and the corporation acts in reliance upon the statute. As pointed out above in Point III, this is true so long as the corporation is specifically named in the legislation. Also, as discussed in Point VI, this rule does not apply to municipal corporations or school districts, nor does it apply where the Constitution has reserved the legislature's right to alter legislation.

The rule did not even apply to the petitioner, Troy Union Railroad Company. The Supreme Court upheld the Court of Appeals' decision in *People ex rel. New York Central and Hudson River Railroad Company v. Mealey,* 224 N.Y. 187 (1918) that the law in question was subject to repeal.

The City of Troy and four railroads had entered into a written agreement to build a terminal to be owned by the railroads, through purchase of stock. The City of Troy was to

finance the project. The city also agreed to join in an application to the legislature that the corporation be exempt from taxation above the amount of the capital stock which was $30,000.00. If the law were not passed, the city agreed to refund the taxes imposed which exceeded $30,000.00. The act was passed, but later repealed. The Court of Appeals ruled that the statute which acquiesced in the arrangement between the parties did not bind the State.

> Exemptions from taxation are not favored by law, and will not be sustained unless such clearly appears to have been the intent of the legislature. * * * such contract should receive a strict interpretation, and every reasonable doubt be resolved in favor of the taxing power. Indeed, it is not too astute to seize upon evidence tending to show either that such exemptions were not originally intended, or that they have become inoperative by changes in the original constitution of the companies. *People ex rel. N.Y.C. & H.R.R.R. Co. v. Mealey*, supra at 197.

There is no proof in this case that the legislature intended a tax exemption for residents living within the appellant school districts.

CONCLUSION

This Motion should be Granted and the appeal Dismissed under Rule 16(b) of the Rules of the Supreme Court upon the ground that no substantial Federal question has been presented, with costs and disbursements to Appellees.

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APPENDICES

APPENDIX A — Constitution of the United States, Article I, Section 10

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 10 of the Constitution of the United States provides:

"§10. Restrictions upon powers of states

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Product of all Duties and Imports, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay."

APPENDIX B — Constitution of the State of New York, Article I, Section 16, (1894), Renumbered Article I, Section 14 (1938)

§ 14. [Common law and acts of the state legislatures]

Such parts of the common law, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred seventy-five, and the resolutions of the congress of the said colony, and of the convention of the State of New York, in force on the twentieth day of April, one thousand seven hundred seventy-seven, which have not since expired, or been repealed or altered; and such acts of the legislature of this state as are now in force, shall be and continue the law of this state, subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this constitution, are hereby abrogated.

Formerly § 16, renumbered 14 and amended Nov. 8, 1938, eff. Jan. 1, 1939.

APPENDIX C — The Constitution of the State of New York, Article IX, Section 1 (1894), Renumbered Artice XI, Section 1 (1938)

§ 1. [Common schools]

The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.

Formerly Art. 9, § 1, renumbered Art 11, § 1, Nov. 8, 1938, eff. Jan. 1, 1939.

APPENDIX D — Chapter 547 of the Laws of New York, 1918, Section 8

CHAPTER 547 OF THE LAWS OF NEW YORK, 1918

The pertinent Section of the Act provides as follows:

"AN ACT to amend chapter seven hundred and fifty-five of the laws of nineteen hundred and seven, entitled "An act constituting the charter of the city of Rochester," generally.

Became law May 10, 1918, with the approval of the Governor. Passed, three-fifths being present.

Accepted by the City.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§8. Such chapter is further amended by adding thereto a new section to be numbered three hundred and eighty-one, and to read as follows:

§381. Attendance of nonresident pupils. The board of education may allow the children of persons not residents of the city to attend the schools under the care and control of the board upon the payment of such tuition and upon such terms as the board may by resolution prescribe. Permission must be granted to children residing in those portions not annexed of school districts numbers two and ten of the town of Brighton, as such districts existed on the first day of March, nineteen hundred and thirteen, of school district number four of the town of Greece as the same existed on the

APPENDIX D — Chapter 547 of the Laws of New York, 1918, Section 8

first day of March, nineteen hundred and fifteen, and of school district number six of the town of Gates and numbers eight and ten of the town of Greece, as the same existed on the first day of March, nineteen hundred and eighteen, to attend without the payment of tuition schools under the care and control of the board. The board must cause to be made and filed in its office maps showing the boundaries of the aforesaid districts as existing on said respective dates."

APPENDIX E — Chapter 129 of the Laws of New York, 1975

CHAPTER 129 OF THE LAWS OF NEW YORK, 1975

"AN ACT to abolish certain school districts in Monroe county and to include those districts in central school districts and to make an appropriation therefor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Notwithstanding any other provisions of any general, special or local laws, rules or regulations to the contrary:

a. Greece common school districts numbers eight and ten, Greece union free number four school district and the northern part of Gates common school district number six, which is contained within the town of Greece, Monroe county, New York, are hereby abolished and Greece union free number four school district, Greece common school districts numbers eight and ten and the northern part of Gates common school district number six, which is contained within the town of Greece, Monroe county, New York, are added to and made a part of Greece central school district of the town of Greece, Monroe county.

b. The southern part of Gates common school district number six is herreby abolished and that part which is contained within the town of Gates is added to and made a part of Gates Chili central school district.

c. Brighton common school district number two and Brighton ten common school district are hereby abolished and made a part of Penfield central school district.

d. Brighton five common school district is hereby abolished and made a part of the Rush-Henrietta central school district.

§2. a. Real or personal property possessed by any of the

school districts being abolished herein shall remain the property of the said district being abolished.

b. Any district being abolished herein which on the effective date of this act, owns real or personal property shall continue to exist in law for the purpose of disposing of and settling any property interests it may be possessed of and to that end the trustees and other officers shall continue in office and have whatever authority necessary to implement the provisions of this subdivision.

c. The provisions of sections fifteen hundred seventeen and fifteen hundred eighteen of the education law shall apply to all cases in section one hereof.

§3. a. The city school district of the city of Rochester shall guarantee seats in the schools of the city school district to all students from the common school districts, or union free school district, abolished by this act who are enrolled or registered for attendance in schools in the city school district as of May thirty-first, nineteen hundred seventy-five and siblings of such subject, however, to a rate of tuition computed in accordance with approved state procedures.

b. The central school districts designated in section one of this act shall be obligated to pay the tuition as provided for in subdivision a of this section for students residing in the respective central school districts who, on and after July first, nineteen hundred seventy-five, choose to remain in schools in the city school district, and shall also be obligated, on and after such date, to provide transportation as required by law or as authorized by the voters of the respective central school districts. Such obligation shall extend only to students who were enrolled or registered for attendance in schools in the city school district as of May thirty-first, nineteen hundred seventy-five and siblings of such students and shall continue until such students and siblings complete the twelfth grade.

c. With the exception of those instances enumerated in this section, the city of Rochester, on and after July first, nineteen hundred seventy-five shall no longer be required to accept students from the school districts being abolished herein into its school district without the payment of tuition.

§4. a. Real property in such common school districts and the union free school district abolished in section one of this act shall be subject to taxation pursuant to article thirteen of the real property tax law; provided, however, that such real property shall be exempt from taxation by the central school district in which located to the extent of eighty percent of the tax which would otherwise be so payable for the fiscal year commencing July first, nineteen hundred seventy-five, to the extent of sixty percent of such tax for the fiscal year commencing July first, nineteen hundred seventy-six, to the extent of forty percent of such tax for the fiscal year commencing July first, nineteen hundred seventy-seven, and to the extent of twenty percent of such tax for the fiscal year commencing July first, nineteen hundred seventy-eight.

b. The central school districts in which real property is located, which property is exempted from taxation by the foregoing subdivision of this section, shall be held harmless from loss of revenue because of such exemption. Such central school districts shall make all budget calculations, shall be treated for all state aid and apportionment of public money purposes, and shall levy its local property taxes as if such real property were not exempt. The total amount of the exempt portion of any such real property taxes, as provided in subdivision a of this section shall be billed to the commission of education on or before October first of each such year and such commissioner is hereby authorized and directed to apportion such amounts to such central school districts on or before November first of each such year, provided that such moneys shall be treated as tax moneys for

all purposes of article seventy-three of the education law and provided further, that no interest or penalties shall be charged by anyone on such payments, provided further, that notwithstanding the provisions of any general or special law, the commissioner of education, in computing the aid ratio of any central school district of which the common school districts and union free school district referred to in section one of this act shall have become a part, shall permit the use of the additional resident weighted average daily attendance for aid ratio purposes during the school years nineteen hundred seventy-five-seventy-six and nineteen hundred seventy-six-seventy-seven, which said additional resident weighted average daily attendance shall be that of students from such former common school districts and union free school district who shall be attending the schools of such central school districts during such two school years.

§5. The sum of two million five hundred thousand dollars ($2,500,000), or so much thereof as may be necessary, is hereby appropriated out of any monies in the state treasure in the general fund to the credit of the local assistance fund, not otherwise appropriated, to the education department for the purposes of section four of this act, payable on vouchers certified or approved by the commissioner of education upon audit and warrant of the state comptroller as provided by law.

§6. This act shall take effect May thirty-first, nineteen hundred seventy-five, except that section five thereof shall take effect July first, nineteen hundred seventy-five and except further that for the purposes of article seventy-three of the education law, this act shall take effect July first, nineteen hundred seventy-five."

APPENDIX F — Order of the Court of Appeals of the State of New York (filed April 9, 1981)

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the ninth day of April A.D. 1981

PRESENT, HON. LAWRENCE H. COOKE, *Chief Judge, presiding.*

4 *Mo. No. 391 SSD 48*

Prudence J. Camardo, et al.,

Appellants,

vs.

The Board of Education of the City of Rochester and the City of Rochester, et al.,

Respondents.

(and another action.)

The appellants having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court *sua sponte,* upon the ground that no substantial constitutional question is directly involved.

/s/ JOSEPH W. BELLACOSA
Clerk of the Court

APPENDIX G — Order and Memorandum of the Appellate Division of the Supreme Court of New York, Fourth Judicial Department (filed December 12, 1980)

SUPREME COURT OF
THE STATE OF NEW YORK
APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

PRESENT: SIMONS, J.P., HANCOCK, SCHNEPP, CALLAHAN, MOULE, JJ.

Prudence J. Camardo, et al.,

Appellants,

v.

The Board of Education of the City School District and The City of Rochester, et al.,

Respondents,

And Another Action.

The above named Prudence J. Camardo, et al. having appealed to this Court from a judgment of the Supreme Court, entered in the Monroe County Clerk's office on April 3, 1979 and said appeal having been argued by Jeffrey Marks of counsel for appellants, Reynolds Hahn of counsel for respondents Board of Education of City School District and City of Rochester Shirley Siegel of counsel for respondent, State of N.Y. William Easton of counsel for respondent Board of Education of Greece Central School District Robert Wendt of counsel for respondent Board of Education of Rush-Henrietta Central School District, and due deliberation having been had thereon

It is hereby ORDERED, That the judgment so appealed from be and the same hereby is unanimously affirmed with costs.

Memorandum, which is hereby made a part hereof.

Entered: DEC 12 1980

MARY F. ZOLLER, *Clerk*

APPENDIX G — Order and Memorandum of the Appellate Division of the Supreme Court of New York, Fourth Judicial Department (filed December 12, 1980)

995. (Monroe Co.) — Prudence J. Camardo, et al, Appellants v. The Board of Education of the City School District and the City of Rochester, et al, Respondents, and Another Action. — Judgment unanimously affirmed with costs. Memorandum: By chapter 359 of the Laws of 1915, chapter 547 of the Laws of 1918 and chapter 519 of the Laws of 1922, the City Charter of Rochester was amended to bring lands formerly a part of the Towns of Greece and Brighton within the city boundaries. Permission was granted to children in unannexed school districts, whose school facilities were annexed, to attend Rochester city schools without payment of tuition. The tuition-free attendance of these nonresident children continued until enactment of chapter 125 of the Laws of 1975 (May 1975 Act). The May 1975 Act provides that these unannexed school districts be abolished and added to existing central school districts; that the city school district guarantee seats to all students from the abolished districts and their siblings, enrolled in city schools as of May 31, 1975; that the property owners in the abolished districts be required to pay the taxes of the appropriate central school district at the rate of 20 percent the first year, increasing by 20 percent each year to 100 percent the fifth year; and that the State pay 2.5 million dollars to the central school district for revenues lost by operation of these tax exemptions.

Plaintiffs brought this action alleging that the earlier legislation created a contract which promised them the right to maintain their own school districts and the right to attend city schools tuition-free, and that the contract could not be repudiated by the May 1975 Act. Plaintiffs contend that the May 1975 Act unconstitutionally impairs the obligation of contract, and, in the alternative, they challenge its validity on four different constitutional grounds. At the close of plaintiffs' case, defendants moved for declaratory judgment. The court

APPENDIX G — Order and Memorandum of the Appellate Division of the Supreme Court of New York, Fourth Judicial Department (filed December 12, 1980)

granted defendants' motion and entered judgment dismissing the complaint, holding that plaintiffs failed to prove a breach of any contractual obligation between the City, State and affected homeowners; that plaintiffs failed to prove any cause of action against defendants; and that the provisions of the May 1975 Act are not violative of either the Constitution of the United States or the State of New York.

In determining whether subsequent legislation impairs the obligation of a contract, the essential question is the existence of a contractual relation (Cook v City of Binghamton, 48 NY2d 323). While the presumption against the existence of a contract is stronger where plaintiff relies upon general rather than special legislation, the elements necessary to a contractual agreement must still be shown; i.e., that the language and circumstances manifest a legislative intent to create private rights of a contractual nature enforceable against the State, and that contractual elements such as bargained-for exchange between the parties, consideration and detrimental reliance exist (Cook v City of Binghamton, supra; Pennsylvania R.R. Co. v State of New York, 11 NY2d 504; People v Brooklyn Garden Apartments, Inc., 283 NY 373). Plaintiffs failed to prove any of the elements necessary to a contractual relation; therefore, their claim of contract impairment fails.

Plaintiffs' constitutional challenge of certain provisions of the May 1975 Act appears to be an attempt to invalidate the reorganization provision as unconstitutional by association, since they claim that it would not be severable from the alleged unconstitutional portions. The challenges are without merit and, even had they been found otherwise, the severability clause of the Act would allow the reorganization plan to stand apart. (Appeals from Judgment of Monroe Supreme Court, Blauvelt, J. — Declaratory Judgment.) Present: Simons, J.P., Hancock, Schnepp, Callahan, Moule, JJ.

APPENDIX H — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

ACTION NO. 1

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

PRUDENCE J. CAMARDO, 793 Lee Road, Rochester, New York; ARTHUR FALZONE, 1514 Ridgeway Ave., Rochester, New York; HENRY J. PAPE, 1656 Creek Street, Rochester, New York; IVAN WAHLS and LILLIAN WAHLS, 223 Delmar Road, Rochester, New York; BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT NO. 4, 537 Denise Road, Rochester, New York; BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT NO. 10, 263 Bakerdale Road, Rochester, New York; BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT NO. 8, 1221 Lee Road, Rochester, New York; BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT NO. 6, 729 Lee Road, Rochester, New York; DANIEL A. STETZEL, SR., 537 Denise Road, Rochester, New York,

Plaintiffs,

vs.

CITY OF ROCHESTER, NY, City Hall, Rochester, New York; BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, 13 S. Fitzhugh Street, Rochester, New York; BOARD OF EDUCATION OF GREECE CENTRAL SCHOOL DISTRICT, 1790 Latta Road, Rochester, New York; STATE OF NEW YORK: BRIGHTON COMMON SCHOOL DISTRICT, 600 Grosvenor Road, Rochester, New York; BRIGHTON TEN COMMON SCHOOL DISTRICT, 41 O'Connor Road, Fairport, New York; BRIGHTON FIVE COMMON SCHOOL DISTRICT, 41 O'Connor Road, Fairport, New York; BOARD OF EDUCATION OF GATES-CHILI CENTRAL SCHOOL DISTRICT, 910 Wegman

APPENDIX H — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

Road, Rochester, New York; BOARD OF EDUCATION OF PENFIELD CENTRAL SCHOOL DISTRICT, 2590 Atlantic Avenue, Penfield, New York; BOARD OF EDUCATION OF RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, 2034 Lehigh Station Road, Rochester, New York,

Defendants.

ACTION NO. 2

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

ELLEN ANDERSON, 200 Norman Road, Rochester, New York and CHARLES and GERTRUDE LA VALLE, 110 Bastian Road, Rochester, New York, as residents, property owners and taxpayers residing in former Brighton five common school district, on behalf of themselves and all other similarly situated residents, property owners and taxpayers residing in said district, and BERNADETTE UEBLACKER, 560 E. River Road, Rochester, New York; JAMES and PATRICIA BRITT, 165 Bastian Road, Rochester, New York, as residents, property owners, taxpayers and parents of school age children residing in former Brighton five common school district, on behalf of themselves and all other similarly situated parents residing in said district,

Plaintiffs,

vs.

THE CITY OF ROCHESTER, City Hall, Rochester, New York; THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, 13 S. Fitzhugh Street, Rochester, New York; THE BOARD OF EDUCATION OF THE RUSH-

APPENDIX H — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

HENRIETTA CENTRAL SCHOOL DISTRICT, 2034 Lehigh Station Road, Rochester, New York; and THE STATE OF NEW YORK,

Defendants.

The issues in this action for declaratory judgment having come on to be heard before this Court at a Trial Term thereof held at the Hall of Justice in the City of Rochester, New York before Justice Arthur Ervin Blauvelt without a jury on November 6, 8, 9, 13 and 14, 1978 and the Plaintiffs in Action No. 1 having appeared by Culley, Marks, Corbett, Tanenbaum, Reifsteck and Potter, William M. Marks, Burton D. Tanenbaum and Jeffrey P. Marks, Esqs. of Counsel; and the Plaintiffs in Action No. 2 having appeared by Robert D. O'Connell, Robert D. O'Connell and James Coniglio, Esqs. of Counsel; and the Defendant Board of Education of Greece Central School District having appeared by Easton, Bittker & DeLuca, William E. Easton and David V. DeLuca, Esqs. of Counsel; and the Defendant State of New York having appeared by Lewis J. Lefkowitz, Attorney General of the State of New York by Richard A. Dutcher, Assistant Attorney General, Paul O. Harrison of Counsel; and the Defendant City of Rochester, New York having appeared by Louis N. Kash, Corporation Counsel, Reynolds E. Hahn, Esq. of Counsel; and the Defendant Board of Education of the City School District, City of Rochester having appeared by Adam D. Kaufman, Michael B. Kirschen, Esq. of Counsel and the Defendant Board of Education of Rush-Henrietta Central School District having appeared by Robert H. Wendt, Esq. and the Plaintiffs in both Action No. 1 and Action No. 2 having presented their proofs and rested and the Court having made its Bench decision orally that the Plaintiffs have failed to prove Chapter 125 of the Laws of 1975 of the State of New York is an unconstitutional

enactment of the New York State Legislature, that Chapter 125 of the Laws of 1975 of the State of New York was a constitutional enactment which was not repugnant to either the constitution of the United States or the State of New York, and that the Plaintiffs failed to prove the breach of any contractual obligation or prove any cause of action against the Defendants and granting judgment of non-suit in favor of the Defendants dismissing the complaints of the Plaintiffs for failure to prove a cause of action and directing that judgment be entered accordingly.

Now on motion of Easton, Bittker & DeLuca, attorneys for the Defendant Board of Education of Greece Central School District it is

ADJUDGED AND DECREED that the provisions of Chapter 125 of the Laws of 1975 of the State of New York, as amended, are constitutional and have not been proven to violate either the constitution of the United States of America or the State of New York and it is further

ADJUDGED AND DECREED that the Plaintiffs have failed to prove a breach of any contractual obligation between the parties or any cause of action against the Defendants of any of them and it is further

ADJUDGED AND DECREED that the complaints herein are dismissed for failure of the Plaintiffs to prove a cause of action and it is further

ADJUDGED AND DECREED that the motions of the Defendants and Plaintiffs for Summary Judgment are denied, the motion of Defendants to strike certain testimony, to strike the answers to the interrogatories contained in Exhibit 3 and Exhibit 5 and the so called Anderson deed from Remington Anderson in 1917 is denied and the motion of the Defendant

APPENDIX H — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

City of Rochester and Board of Education of the City School District to strike certain paragraphs of the complaint is denied and it is further

ORDERED AND DECREED that all other motions on which the Court reserved decision during trial have become academic in view of the disposition of this case and are not passed upon.

ADJUDGED AND DECREED that the Defendants herein recover of the Plaintiffs' costs and disbursements of this action as taxed in the sum of $400.00 to be divided equally among the defendants.

Approved as to form:

CULLEY, MARKS, CORBETT,
TANENBAUM, REIFSTECK & POTTER

By BURTON D. TANENBAUM

ATTORNEYS FOR COMARDO, et al

ROBERT D. O'CONNELL

By

ATTORNEY FOR ANDERSON, et al

ROBERT ABRAMS, Attorney General, by
PAUL O. HARRISON, ASSISTANT ATTORNEY GENERAL

By PAUL O. HARRISON

ATTORNEYS FOR STATE OF NEW YORK

LOUIS K. NASH

By LOUIS N. KASH By REYNOLDS E. HAHAN

ATTORNEYS FOR CITY OF ROCHESTER

APPENDIX H — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

ADAM D. KAUFMAN

By ADAM D. KAUFMAN

ATTORNEY FOR CITY SCHOOL DISTRICT
CITY OF ROCHESTER

ROBERT H. WENDT

By ROBERT H. WENDT

ATTORNEY FOR BOARD OF EDUCATION
RUSH-HENRIETTA SCHOOL DISTRICT

Signed March 30, 1979.

ENTER:

/s/ ARTHUR ERVIN BLAUVELT
JUSTICE OF THE SUPREME COURT

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